

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

AMBER SCHNEIDER, individually and on
behalf of all similarly-situated current citizens
of Illinois and the United States

Plaintiffs,

v.

MOTT’S LLP,

Defendant.

Case No. 3:21-cv-01251

Chief Judge Nancy J. Rosenstengel

**DEFENDANT MOTT’S LLP’S STATEMENT OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF ITS MOTION TO DISMISS**

Pursuant to this Court’s Order (Dkt. 29), Defendant Mott’s LLP (“Mott’s”) submits this statement in support of its Motion to Dismiss (Dkt. 20) (“Motion”).

In *Song v. Champion Petfoods USA, Inc.*, 27 F.4th 1339 (8th Cir. 2022), the Eighth Circuit Court of Appeals issued a published opinion affirming the district court’s dismissal on reasonable consumer grounds. *See* Exhibit A. Plaintiffs in *Song* challenged the claim that the defendant’s dog food was made with “fresh regional ingredients,” with plaintiffs contending that this meant “*all* of the dog-food ingredients were fresh and regional.” Ex. A at 5 (emphasis added). The Eighth Circuit rejected this argument, deeming that an implausible interpretation of the label under the “reasonable consumer” standard. *Id.* (citing *Weaver v. Champion Petfoods, USA Inc.*, 3 F.4th 927, 937 (7th Cir. 2021)). The court further explained this interpretation was discredited by language on the rest of the label explaining that “Champion uses non-fresh and non-regional ingredients. . . .” Ex. A at 5.

Song supports several of Mott’s grounds for dismissal. First, *Song* confirms that the entire product label is relevant to the “reasonable consumer” analysis, and that whether a label is

deceptive can be decided at Rule 12. Ex. A at 4-5; Mott’s Reply (Dkt. No. 26) at 3-4 (discussing *Weaver*). Second, *Song* reaffirms that other language on the label is relevant to the interpretation of the contested claim—here that includes language on the Applesauce’s label explaining that because it is made from 100% real fruit, it “may contain seeds, stems or other pieces of natural fruit.” Dkt. No. 26 at 2; Ex. A at 4. Third, *Song* supports Mott’s argument that references to a particular ingredient in a food does not communicate that is the *only* ingredient in the food. Dkt. No. 26 at 3-4; Ex. A at 4.

The *Song* court’s footnoted citation to *Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 473-74 (7th Cir. 2020), *see* Ex. A at 5 n.7, does not undermine *Song*’s applicability, because the “Made From 100% Real Fruit” statement is a truthful description of the product, not a misrepresentation.

Dated: April 6, 2022

MOTT’S LLP

By: /s/ Emily Craven

One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Emily Craven, hereby certify that on April 6, 2022, I caused the foregoing document to be filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Emily Craven
Emily Craven